

APRIL 19, 1990

**BOSTON REDEVELOPMENT AUTHORITY
DESIGNER SELECTION PROCEDURES**

The following designer selection procedures apply to the selection of designers on building construction, renovation, alteration, remodeling and repair projects, the estimated cost of which exceeds ten thousand dollars (\$10,000). For those projects without an associated estimated construction cost, including but not limited to feasibility studies, projects are exempt from these procedures if the cost of the design service is less than two thousand five hundred dollars (\$2,500). These procedures do not apply to the selection of designers for public works projects bid under provisions of Chapter 30, section 39M and projects that are integral parts of the development if there is a question whether a particular project is a building project subject to these guidelines.

1. Definitions. The following terms shall have the meanings herein set forth:

- (a) "Authority", the Boston Redevelopment Authority.
- (b) "Board", the Board of the Authority.
- (c) "Building project", a capital facility project undertaken for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of any building and appurtenant structures, facilities and utilities, including initial equipment and furnishings thereof; provided, however, that appurtenant buildings or structures which are required to be constructed as integral parts of the development of sewer, water, and highway systems shall not be subject to these procedures.
- (d) "Committee", the Boston Redevelopment Authority Designer Selection Committee as appointed from time to time by the Director. Such committee shall include not less than three members, not less than one of whom shall be a registered architect, landscape architect, or engineer.
- (e) "Designer", an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of architecture, landscape architecture, or engineering, which satisfies the following:
 - i. if an individual, the individual is a registered architect, landscape architect, or engineer;
 - ii. if a partnership, a majority of all the partners are persons who are registered architects, landscape architects, or engineers;
 - iii. if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the

stock ownership and the chief executive officer are persons who are registered architects, landscape architects, or engineers, and the person to have the project in his or her charge is registered in the discipline for the project.

- iv. if a joint venture, each joint venture satisfies the requirement of this section.
- (f) "Designer services" means any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:
- i. preparation of master plans, studies, surveys, soil tests, cost estimates or programs;
 - ii. preparation of drawings, plans or specifications including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction contracts documents;
 - iii. supervision or administration of a construction contract, and
 - iv. construction management or scheduling.
- (g) "Director", the Director of the Authority.
2. Issuance of RFP; Advertising. A request for proposals (RFP) for each contract for designer services for a project subject to the jurisdiction of the committee shall be publicly advertised by the committee in a newspaper of general circulation in the area in which the project is located or to be located, and in the central register established under M.G.L. Chapter 9, section 20A, and in such places as the committee requires at least two weeks before the deadline for filing applications. Separate board authorization shall not be required for such advertising. A contract for designer services for a project whose estimated cost of construction is between ten thousand dollars (\$10,000) and twenty-five thousand dollars (\$25,000) need only to be advertised in the central register.
3. Contents of RFP. The RFP will provide the following information:
- (a) a description of the project, the specific designer services sought, estimated construction cost, and the time allowed for completion;
 - (b) when and where the program prepared for the project will be available for inspection by applicants, or a statement that there is no program beyond the information in (a) above;
 - (c) the qualifications required of applicants for the project;
 - (d) the categories of designers' consultants, if any, for which the applicants must list consultants they intend to use;

- (e) whether the fee has been set or will be negotiated. If the fee has been set, its amount must be stated in the RFP as a total dollar amount, not a percentage. If the fee is to be negotiated, the awarding authority shall establish a not-to-exceed amount prior to negotiations, but need not publish it in the RFP.
 - (f) the deadline for submission of proposals;
 - (g) the person and address to which proposals should be sent;
 - (h) any other pertinent information.
4. Selection Procedure. Applicants or finalists may be required by the committee to:
- (a) appear for an interview before the committee;
 - (b) present a written proposal to the committee; or
 - (c) participate in a design competition held by the committee.
- Unless three or fewer applicants responded to the RFP, the committee shall evaluate all applicants to a group of not fewer than three finalists and shall afford each finalist an equal opportunity to provide additional information to or appear before the committee.
5. Selection Criteria. The selection of the finalists will be based on the following criteria:
- (a) prior similar experience;
 - (b) past performance on public and private projects;
 - (c) financial stability;
 - (d) identity and qualifications of the consultants who will work with the applicant on the project;
 - (e) City policies on hiring minority and women-owned business enterprises and Boston-based companies and on Boston resident employment; and
 - (f) any other criteria that the committee considers relevant for the project.
6. Changes in Consultants. When the committee has required that applicants list consultants which they intend to use, any changes in, or addition to, consultants named in the application must be reported to the committee with a written statement by the designer or construction manager of the reasons for the change. No person or firm debarred pursuant to M.G.L. Chapter 149, section 44C or disqualified pursuant to M.G.L. Chapter 7, section 38D shall be so included as a finalist.

7. Recommendations to Board. The committee may prepare a recommendation of a designer to the Board or may seek additional applicants. Any such recommendation shall include an explanation of the reasons for the recommendation, shall state the fee for the proposed designer services, in accordance with Section 8 of these procedures, and shall be subject to the approval of the Director prior to transmittal to the Board. The committee shall make available to the public the explanation of its recommendation. The committee shall transmit to the Director and/or the Board, on request, all material made or received relating to such recommendation. Final designer selection shall be made by of the Board.
8. Contracts to State Total Dollar Amount. The design contract, and any subsequent amendments thereto, shall state the fee as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in scope of services.
9. Required Contract Provisions. Every contract for design services shall include:
 - (a) certification that the designer or construction manager has not given, offered, or agreed to give any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
 - (b) certification that no consultant to, or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer or construction manager;
 - (c) certification that no persons, corporation or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and
 - (d) certification with respect to contracts which exceed ten thousand dollars (\$10,000) or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars (\$100,000), that the designer has internal accounting controls as required by subsection (c) of M.G.L. Chapter 30, section 39R, and that the designer has filed and will continue to file an audited financial statement as required by subsection (d) of said section 39R.
 - (e) a requirement that the designer at his/her own expense obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of the designer or of any person or business entity for whose performance of the designer is legally liable arising

out of the performance of such contract for design services. The Authority may require a consultant employed by a designer subject to this subparagraph to obtain and maintain a similar liability insurance policy. The total amount of such insurance shall at a minimum equal the lesser of one million dollars (\$1,000,000) or ten percent of the project's estimated cost of construction, or such larger amount as the Authority may require, and shall cover the applicable period of limitations. A designer required by the Authority to obtain all or a portion of such insurance coverage at this own expense shall furnish a certificate or certificates of insurance coverage to the public agency prior to the award of the contract.

10. Required Recordkeeping. In the selection of applicants to perform design services the following records will be kept by the Authority:

- (a) all information supplied by or obtained about each applicant;
- (b) all actions taken by the committee relating to any project;
- (c) all actions taken by the awarding authority relating to any project.

These records will be available for inspection by the State Designer Selection Board, the Inspector General, and other authorized public agencies.

11. Conflict of Interest. No member of the committee shall participate in the selection of a designer as a finalist for any project if the member or any member of his or her immediate family:

- (a) has a direct or indirect financial interest in the award of the design contract to any applicant;
- (b) is currently employed by, or is a consultant to or under contract to an applicant;
- (c) is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
- (d) has an ownership interest in, or is an officer or director of, any applicant.

12. Emergency Procedures. Whenever the health or safety of any persons will be endangered because of the time required for the selection of a designer, programmer or construction manager by the foregoing procedures, or whenever a deadline for action is set on a project by any court or federal agency which cannot be met if these selection procedures are followed, the Director may declare that an emergency situation exists. In such a situation, the committee may select finalists from the existing standing list of consultants who have previously applied to the committee for projects of this nature, as previously advertised, or who have filed a master file brochure with the committee. Such procedure shall substitute for the procedures and requirements set forth in Sections 2 and 3 above. Otherwise,

the requirements and procedures of these Designer Selection Procedures shall apply.

MEMORANDUM

April 19, 1990

TO: Boston Redevelopment Authority and
Stephen Coyle, Director

FROM: Paul Reavis, Assistant Director for Engineering and
Design Services
David Carlson, Acting Deputy Assistant Director for
Engineering and Design Services
Kevin Walsh, Chief of Operations

EXECUTIVE SUMMARY:

This memorandum requests Board approval of regulations to govern the selection of designers for public building projects undertaken by the BRA. These regulations implement M.G.L. ch 7, Section 38K.

This memorandum requests Board approval of proposed regulations setting forth procedures to be observed in the selection of designers for building construction, alteration, remodeling, or repair projects undertaken by the BRA, costing more than ten thousand dollars (\$10,000.00). These proposed regulations implement the requirements of M.G.L. Chapter 7, Section 38K, which establishes designer selection procedures to be followed by cities, towns and their agencies and instrumentalities.

The proposed regulations apply only to designer services for the construction of buildings and their appurtenances, and not to designer services for public works projects such as sewer, water, and highway projects.

The basic requirements provided for in the proposed regulations are as follows:

1. Advertising of a request for proposals ("RFP") for the proposed design work not less than two weeks before the filing deadline for applications. Separate Board authorization for such advertising would not be required. (Sections 2 & 3.)
2. Preparation of a recommendation to the Board, with an explanation available publicly. (Section 7.)
3. Contract must state a total dollar amount. (Section 8.)

4. Contract must include standard provisions regarding improper conduct, auditing procedures, and insurance. (Section 9.)

The proposed regulations will formalize Authority's designer selection procedures.

Accordingly, the staff recommends that the Board adopt the proposed regulations attached to this Memorandum as Exhibit "A" as regulations of the Authority, effective as of April 19, 1990. An appropriate vote follows:

VOTED: That the Board hereby adopts the regulations entitled "Boston Redevelopment Authority Designer Selection Procedures", dated April 19, 1990 and attached hereto as Exhibit "A", as regulations of the Boston Redevelopment Authority, effective as of April 19, 1990.